

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN ANTHONY YOUNG, a/k/a ANTHONY JACKSON, TIMOTHY TROY JONES, KEITH TURNER, MICHAEL WALKER, SHELDON YOUNG, and ANTHONY JONES,

Defendant-Appellant.

UNPUBLISHED

October 4, 2005

No. 253626

Calhoun Circuit Court

LC No. 2003-003376-FC

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant appeals his jury trial conviction of armed robbery, MCL 750.529. The court sentenced defendant as a habitual offender to a term of twenty to forty years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant claims on appeal that the trial court abused its discretion in refusing to grant his request for an adjournment on the first day of the trial, so that he could present a potential alibi witness, and that this denial denied him his due process right to present a defense. We disagree. An adjournment will be granted on the ground of unavailability of a witness only for good cause shown and if diligent efforts have been made to produce the witness. *People v Coy*, 258 Mich App 1, 18-19; 669 NW2d 831 (2003); MCL 768.2; MCR 2.503(C). We review a trial court's decision to grant or deny an adjournment for an abuse of discretion. *People v Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000). In determining whether the court abused its discretion in denying a defendant's motion for adjournment, we consider "whether defendant (1) asserted a constitutional right, (2) had a legitimate reason for asserting the right, (3) had been negligent, and (4) had requested previous adjournments." *Coy, supra* at 18-19, quoting *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 810 (1992). "Even with good cause and due diligence, the trial court's denial of a request for an adjournment or continuance is not grounds for reversal unless the defendant demonstrates prejudice as a result of the abuse of discretion." *Coy, supra* at 18-19, citing *Snider, supra* at 421-422.

Here, the trial court did not abuse its discretion when it denied the adjournment because defendant failed to use due diligence to secure the attendance of the witness for trial. Defendant was negligent in securing the presence of this potential alibi witness for trial. *Coy, supra* at 18-

19. Defendant had approximately three months to prepare an alibi defense. Defendant initially listed only two potential alibi witnesses in his alibi notice filed over one month before the trial date, but did not list the witness at issue as an alibi witness. Defendant obviously should have known of this witness, his ex-wife, who allegedly saw him in Minneapolis on the day of the incident. Yet, defendant failed to notify his attorney of her existence until four days before the scheduled trial date and waited until the day before the trial date to request an adjournment. There was no indication in the record that defendant attempted to subpoena the witness to appear at the trial or that any attempts whatsoever were made to secure her presence. Rather, defendant's motion for adjournment merely indicated that the witness was unavailable on the trial date because of family and work obligations.¹ Because defendant failed to exercise due diligence, we find no abuse of discretion in denying defendant's request for an adjournment. *Snider, supra* at 419.

Defendant also says that the trial court abused its discretion by refusing to provide travel funds for a potential defense witness residing in Nevada. We disagree. We review a trial court's decision regarding requests for witness fees for an abuse of discretion. *In re Klevorn*, 185 Mich App 672, 678; 463 NW2d 175 (1990); *People v Thornton*, 80 Mich App 746, 752; 265 NW2d 35 (1978).

The court had no information, other than the witness' assertion that she did not have the funds to come to Michigan and the court properly declined to accept this assertion as sufficient. Indeed, at a previous hearing, defendant advised the court that this witness did not need assistance with travel expenses. Further, no information was provided to the court regarding this witness's financial or employment status. Clearly, although the court may allow for payment of expenses to secure the presence of out-of-state witness, MCL 775.7; MCL 775.15, it is not required to do so. Under these circumstances, we find no abuse of discretion because the court was not convinced that there was a need to provide public funds for the witness' transportation expenses. *In re Klevorn, supra* at 678.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Jane E. Markey

¹Contrary to defendant's argument on appeal, there is no indication in the record that the witness'